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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Policies and Rules Implementing	)	CC Docket No. 93-22
the Telephone Disclosure and	)	RM-7990
Dispute Resolution Act	)	

AT&T COMMENTS

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SUMMARY

AT&T supports the Commission's initiative in this proceeding to implement Title I of the Telephone Disclosure and Dispute Resolution Act ("TDDRA"). With certain specific modifications, the Commission's proposed rules will fully serve the statutory objective of protecting consumers from abusive practices in connection with "pay-per-call" services.

The Commission's proposed definition of a pay-per-call service should include a specific definition of excluded "presubscription" offerings. To accord with the statutory purposes, such exempted pre subscription arrangements should provide callers, prior to the call for which charges are assessed, the same information with respect to price and program content available under the pay-per-call rules. AT&T also supports the proposed requirement that carriers must terminate transmission of pay-per-call programs which they know, or reasonably should know, are being offered in violation of TDDRA. This requirement applies when a carrier is aware a program violates the statute, or when it receives a report that would reasonably lead it to investigate an unlawful program, but it does not obligate carriers actively to police programs offered by information providers ("IPs") to whom they provide transmission service.

AT&T supports the Commission's initiative to consolidate all interstate pay-per-call services on the 900 Service Access Code ("SAC") to allow customers easily to recognize the pay-per-call character of a program. The Commission should, however, compile additional information on the potential costs of implementing a system designating specific 900 NXXs for certain program types.

The Commission's proposed rules on collect audiotext calls should also be modified to permit continued carrier billing, and disconnection of service for non-payment, for the tariffed service charges for such calls (as distinguished from the IPs' premium charges). Carriers do not, and cannot reasonably be expected to, distinguish between this type of traffic and other collect calls. Moreover, the proposed rule requiring carriers to refund charges whenever a program is found to be in violation of TDDRA or other federal laws would do nothing to create the proper incentive for IPs to offer lawful programs, and could subject carriers to open-ended refund liability years after a pay-per-call program was carried. Any refund obligation should at most apply only to customers that specifically request such relief within a short period (such as 60 days) after using that service.

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AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, American Telephone and Telegraph Company ("AT&T") hereby comments on the Commission's NPRM in this proceeding,[1] proposing rules to implement Title I of the Telephone Disclosure and Dispute Resolution Act ("TDDRA") concerning "pay-per-call" services.[2]

AT&T supports the Commission's initiative under TDDRA to protect consumers from abusive practices in connection with pay-per-call services, just as it endorsed the Commission's earlier efforts to control such practices in the proceedings leading up to entry of the 900 Services Order in CC Docket No. 91-65.[3] Since the

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1 Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22 and RM-7990, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 93-87, released March 10, 1993 ("NPRM").

2 Pub. L. 102-556, codified at 47 U.S.C. § 228.

3 See AT&T Comments, filed April 24, 1991, and AT&T Reply Comments, filed May 24, 1991, in Policies and

(footnote continued on following page)

inception of 900 service, AT&T has implemented measures to protect consumers of pay-per-call services. Indeed, the standards AT&T already requires as a condition of providing non-regulated Premium Billing services to information providers ("IPs") are largely consistent with the Commission's proposed rules and the proposed regulations of the Federal Trade Commission ("FTC").[4] AT&T believes that, with the modifications discussed below, the proposed rules will effectively serve the Commission's goals in this proceeding and the requirements of the TDDRA.

Definitions and Limitations on Pay-Per-Call Services

The proposed rules adopt essentially verbatim the TDDRA's definition of a "pay-per-call service," in lieu of the definition in the current rules adopted in the 900 Services Order.[5] That statutory definition

(footnote continued from previous page)

Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65; Policies and Rules Concerning Interstate 900 Telecommunications Services, Report and Order, 6 FCC Rcd. 6166 (1991)("900 Services Order"), recon. FCC 93-88, released March 10, 1993.

4 Under Premium Billing, an IP that obtains tariffed 900 transmission from AT&T also has AT&T bill callers, through arrangements with local exchange carriers ("LECs"), for the IP's unregulated sponsor charges. Provision of such billing service by AT&T is not a common carrier function, and thus may be provided on a contract basis. See AT&T 900 Dial-It Services and Third Party Billing and Collection Services, 4 FCC Rcd. 3429 (1989).

5 Compare 47 C.F.R. § 64.709 with proposed § 64.1501.

represents a significant improvement over the current regulation, because it expressly and correctly excludes directory assistance and other tariffed service charges from the pay-per-call category.[6] However, the NPRM also points out (¶ 8 n.5) that the statutory definition of pay-per-call services excludes charges assessed on a customer by an IP under "a presubscription or comparable arrangement," and asks whether such arrangements should be explicitly defined.

In AT&T's view, adoption of such a definition is important to allow both IPs and carriers that provide 900 transmission service to determine compliance with the Commission's regulation. As the NPRM already makes clear (id.), any presubscription arrangement must be "made by subscribers prior to the initiation of a call" for which charges are assessed. AT&T submits that such advance arrangements should also provide callers complete information regarding the prices, terms and other conditions of a program, which are the same data to which the caller would be entitled under the Commission's pay-per-call rules. A presubscription arrangement may be reflected by a variety of methods, including written

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6 By contrast, the current rule (§ 64.709) contains no express exemption for these call types, and only indirectly excludes them because callers to such tariffed services are not assessed rates "greater than, or in addition to, the charge for transmission of the call," which is the hallmark of pay-per-call programs.

agreements between IPs and callers or by provision by IPs to callers of personal identification numbers which must be used to gain access to their pay-per-call programs. However, the key requirements in all cases are that callers receive adequate prior disclosure and that they elect to incur pay-per-call charges.

AT&T also supports the Commission's proposed rule mandating that carriers that assign numbers for pay-per-call services should by contract or tariff require compliance by subscribing IPs with TDDRA and the Commission and FTC implementing regulations. AT&T likewise supports the proposed requirement that a carrier must terminate a pay-per-call program (through disconnection of the underlying transmission service) when it "knows or reasonably should know" that the service is not being offered in compliance with TDDRA and FTC regulations.[7] By adopting this formulation, the proposed regulation correctly recognizes that TDDRA does not require carriers actively to police the preamble, contents or advertising for pay-per-call programs. Instead, a carrier is obligated to invoke the termination provision of the Commission's rules only when it becomes aware of a service offered in violation of the statute or

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[7] See proposed §§ 64.1502-1503. For implementation purposes, the Commission will allow carrier tariffs to reference its regulations and those of the FTC. NPRM, ¶ 9 and n.8

implementing regulations, or when the carrier receives a report which would cause a reasonable person to services be required to use the 900 service access code ("SAC"). As the Commission correctly points out (¶ 16), most interstate pay-per-call applications in use today already use this SAC. However, some pay-per-call programs are now being provided using the 700 SAC; under the Commission's proposal, those IPs would be required to reestablish service using 900 numbers.

AT&T strongly endorses the Commission's plan to consolidate interstate pay-per-call services on the 900 SAC. Many applications other than pay-per-call services are currently provided using the 700 SAC; the use of that dialing prefix by IPs thus creates the possibility of

It is not currently feasible, however, to implement an "office code designation system" under which distinctive 900 NXXs would be assigned to specific categories of pay-per-call programs (e.g., adult-oriented or chat lines). See NPRM, ¶ 18 n.13. As the NPRM (id.) points out, the current 900 numbering plan uses NXX codes (of which there is a finite supply) to identify the interexchange carrier to whose network the call should be routed; the same NXX that designates a carrier cannot also be used to identify a specific program category. Use of those codes to designate the type of program thus could require the LECs and interexchange carriers to implement and adopt new and potentially costly methods of carrier identification, such as 900 database access. The Commission should not consider adoption of an office code designation system without first obtaining complete information regarding the likely costs and development intervals for any proposed alternatives to the current NXX access method.

Prohibition on Service Interruption or Disconnection

The Commission also proposes (¶ 20) to enlarge its existing rule against disconnection of basic telephone service for failure to pay-per-call charges to include a prohibition against "interrupt[ing]" the subscriber's local or long distance service. AT&T supports this extension of the rule, just as it supported the promulgation of the current regulation.[10] However, the Commission's proposed additional extension of the rule (NPRM, ¶ 21) to include non-payment of charges for "collect telephone calls that offer access to" pay-per-call applications should not be adopted, because it fails to distinguish between non-payment of the non-regulated sponsor charges and the tariffed charges for the underlying collect call. As written, the rule would unduly burden carriers furnishing tariffed collect service. Like other carriers, AT&T does not (and is not required to) determine the purpose of a call at the time it obtains collect acceptance, and it would not be feasible for interexchange carriers to perform such a function for the millions of interstate collect calls they process annually. The Commission should therefore clarify the rule to make explicit that it applies only to nonpayment of the non-regulated charges incurred for any such calls.[11]

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[10] See AT&T April 24, 1991 Comments in Docket 91-65, p. 9.

[11] Similarly, the Commission should clarify its proposed regulation (§ 64.1505), prohibiting carriers from billing for collect audiotext and chat calls, to specify that it applies only to the nonregulated charges for such service.

The Commission should also clarify its proposed regulation with respect to 800 telephone numbers used in connection with pay-per-call services (NPRM, ¶¶ 29-30 and proposed § 64.1504) to expressly state that it does not apply to the 800 numbers established by interstate carriers to provide operator (e.g., calling card) services. These calls do not involve pay-per-

(footnote continued on following page)

Billing, Collection and Information Disclosure

With respect to billing of pay-per-call charges, in accordance with TDDRA the NPRM (¶ 37) requires carriers to provide in a part of the bill separate from local and long distance charges certain data (i.e., the date, time, duration and service type) about each pay-per-call charge, and to display a toll-free number from which subscribers can obtain additional information. AT&T endorses these requirements, which largely mirror its own current Premium Billing practices. The NPRM (id.) also seeks comment on whether the name and other information regarding each IP should be included in bills with pay-per-call charges. The Commission properly rejected similar proposals in Docket 91-65, and should do so again here.[12] Provision of such information would be proposed § 64.1509(b)(2). The FTC, in its companion rulemaking to implement TDDRA, has already proposed to require periodic distribution of such a statement.[13] There is merit, however, to the Commission's proposal (NPRM, ¶ 37) that carriers inform customers that IPs may pursue secondary collection action even if a carrier removes a pay-per-call charge from a customer's bill. This information will assist customers in evaluating their potential liability for such charges.

Refunds of Charges

The Commission's proposed customer refund regulation (§ 64.1511) is likewise far broader than necessary to accomplish the consumer protection objectives of TDDRA, and imposes serious potential burdens on carriers. Section 228(f)(1) of the TDDRA requires the Commission to adopt rules providing "appropriate refunds" to subscribers who have been billed pay-per-call charges for programs that "have been found to have violated" the Commission and FTC regulations, TDDRA or other federal laws. This provision complements the prohibition in TDDRA and the Commission's rules against billing in the first instance for pay-per-call charges that the carrier knows or reasonably should know were provided unlawfully.[14]

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13 [illegible]

The Commission's proposed refund rule, however, goes far beyond the bounds of Section 228(f)(1). First, the proposed rule would improperly substitute the billing carrier for the IP as the party primarily liable for reimbursing customers for unlawful pay-per-call charges. The imposition of such an economic obligation upon carriers is not authorized by the TDDRA; indeed, Section 228(e)(1) of TDDRA prohibits imposing a civil penalty upon a carrier solely for providing billing and collection for a pay-per-call service, unless the carrier knew or reasonably should have known that the program was being provided unlawfully. Even more significantly, however, the Commission's proposed rule placing primary liability for refunds on the carrier does nothing to create the appropriate economic incentive for IPs to conform their pay-per-call programs to legal requirements. Instead, the proposed rule would subject rule to limit the carrier's refund obligation solely to those customers who specifically request such relief within a definite time (e.g., 60 days) from the date of service.[16]

Cost Recovery

Because TDDRA precludes recovery by carriers of their compliance costs from the general body of local or long distance ratepayers, the NPRM (¶¶ 41-45) properly focuses in part on means for recovering such "restricted costs". As the Commission points out there, once such costs are isolated, a number of means might be used to recover them, including requiring carriers to establish a discrete rate element or imposition of a surcharge on charges to IPs. The NPRM (¶ 44) requests comments on this issue.

To the extent that AT&T incurs such regulated costs, it intends to recover them through its 900 service rates charged to IPs (who are the primary cost- causative parties). Such an approach is fully consistent with the TDDRA, as well as with Commission's traditional ratesetting policies. There is no basis, as the NPRM (id.) appears to suggest, to remove the "restricted costs" of TDDRA compliance from AT&T's rates through an exogenous adjustment to its price cap indices. Rates for

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[16] The FTC's proposed billing regulations implementing TDDRA contain such a time limit. See proposed 16 C.F.R. § 308.7(b).

900 service are no longer capped, because the outbound business services basket, of which they are a part, has been streamlined by the Commission.

CONCLUSION

For the reasons stated above, the Commission's proposed regulations to implement Title 1 of the TDDRA should be adopted with the modifications described herein.

Respectfully submitted,

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